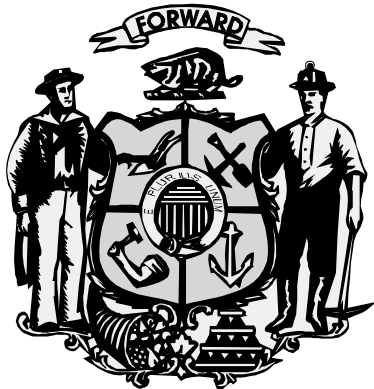


# ELECTION RECOUNT PROCEDURES

**APRIL 1991**

(Cover Rev. 11/01)  
(Pages 4, 6 and 7a Rev. 8/2003)



**Wisconsin State Elections Board**  
132 East Wilson Street, Suite 200  
P.O. Box 2973  
Madison, WI 53701-2973

Phone: 608-266-8005  
Fax: 608-267-0500  
E-mail: [seb@seb.state.wi.us](mailto:seb@seb.state.wi.us)  
Website: <http://elections.state.wi.us>

## TABLE OF CONTENTS

TITLE	PAGE
I. Introduction .....	1
II. Procedures for Requesting a Recount .....	2
A. When is a Recount Held? .....	3
B. Who May Request a Recount? .....	3
C. How is a Recount Requested? .....	3
D. What is a Recount Petition? .....	3
E. When is a Filing Fee Required? .....	4
F. Where Does the Petitioner File the Recount Petition? .	5
G. When Must the Petition be Filed? .....	5
H. What Happens When the Petition is Filed Properly? ....	6
I. Who Conducts the Recount? .....	6
III. Procedures for Conducting the Recount .....	8
A. When Does the Recount Begin? .....	9
B. Who Conducts the Recount? .....	9
C. What Do the Canvassers Do Before Actually Beginning the Recount? .....	9
D. What Does the Board of Canvassers Do? .....	10
E. Who May Attend the Recount? .....	10
F. How Does the Board Conduct the Recount? .....	11
1. Paper Ballots .....	11
2. Voting Machines .....	14
3. Electronic Voting Equipment .....	16
4. Determining Voter Intent .....	17
G. After the Recount is Completed, What Right Does a Candidate or Petitioner Have to Challenge the Results of the Recount? .....	18

## INTRODUCTION

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure that all legal votes are counted properly, that any illegal votes are not counted and that the proper procedures for conducting the election were followed by the election officials.

This process of counting the ballots again is known as a recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This pamphlet describes the procedures for requesting a recount and for conducting the recount of election results. This information is prepared by the State Elections Board pursuant to the requirements of s.9.01(10) Stats. If you have any questions about the recount process, please contact the Elections Board staff at the phone numbers set out below:

General:	(608) 266-8005
Elections Specialist:	(608) 266-3276
Elections Specialist:	(608) 267-0714
Legal Counsel:	(608) 266-0136
FAX:	(608) 267-0500

**PROCEDURES  
FOR  
REQUESTING A RECOUNT**

### **When is a Recount Held?**

The results of an election may only be recounted if a sworn petition requesting a recount is filed with the appropriate filing officer by a person entitled to ask for a recount along with any required fee.

### **Who May Request a Recount?**

Only a candidate may request a recount of an election for an office. Any person who voted at a referendum election may request a recount of the referendum election results.

### **How is a Recount Requested?**

An election recount is requested by filing a sworn recount petition with the filing officer along with any applicable fee. This must be done by the applicable deadline.

### **What is a Recount Petition?**

A recount petition is a sworn statement requesting that the votes at an election be counted again and setting out the reasons why the ballots should be recounted. A verified recount petition (see the attached sample, Form EB-186) must be filed with the filing officer with the applicable fee, if any is required.

The sworn petition must state the following information:

1. The petitioner was a candidate for the office in question. If the results of a referendum election are at issue, the petition must state that the petitioner voted on the referendum question.
2. The petitioner must specifically request a recount.
3. The basis for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office. Or, more specific grounds such as a particular defect, irregularity, or illegality in the conduct of the election may be listed in the petition. If specific defects, irregularities or illegalities are listed, the petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information provided from other sources.
4. The ward, or, if no wards exist, the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may state the municipality, county or district without specifying each ward to be counted. The petitioner may also state "all wards" if the petitioner wants the entire election recounted.

5. A verification statement signed under oath before a person authorized to administer oaths. The verification statement must state that the petitioner knows that the information in the petition is true based on the petitioner's personal knowledge or that the petitioner believes the information is true based on information provided to the petitioner.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of the facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion with the board of canvassers to amend as soon as possible after the petitioner discovers or should have reasonably discovered the new information, and show that the petitioner was unable to include the information in the original petition.

If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m. - two days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector may petition to recount the other wards or municipalities in a referendum election.

If a recount petition is not filed in the proper form by the filing deadline, or is not filed on time, or is not accompanied with the required filing fee, the petitioner loses his or her right to a recount of the election.

A copy of the recount petition, Form EB-186 is set out at the end of this section.

#### **When is a Filing Fee Required?**

In some cases, a fee may be required for the recount. If 1,000 or fewer votes are cast, no fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a fee of \$5 per ward is required. If more than 1,000 votes are cast, no fee is required if the difference is no more than one half of one percent (.5%). If the difference is more than .5% but not more than 2%, the fee is \$5 per ward. If the difference is more than 2%, the petitioner must pay the actual cost of conducting the recount. See chart on page 7a.

To determine if the difference exceeds one-half of one percent or exceeds two percent, multiply the total votes cast by .005 or .02. If the difference between the leading candidate and the candidate requesting the recount is greater than the number determined by multiplying the total votes cast in the election by .005, \$5 per ward is due. If the difference between the leading candidate and the candidate requesting the recount is greater than the number determined by multiplying the total votes cast in the election by .02, the actual cost of the recount is due.

The "leading candidate" is the candidate winning the election. In an election where more than one candidate is elected to the same office of in a primary election when two or more candidates are nominated, the

"leading candidate" is the person receiving the lowest number of votes, but who is still elected or nominated. It is not the candidate with the most votes.

The fee is \$5 for each ward that is being recounted or \$5 for each municipality if the municipality is not divided into wards. The fee is \$5 for each ward included in a polling place that combines wards. The fee must be paid in cash or in another form of payment acceptable to the filing officer.

#### **Where Does the Petitioner File the Recount Petition?**

The petitioner files the recount petition with the filing officer with whom nomination papers or a declaration of candidacy are filed for that office. The recount petition is filed as follows:

- The petition for the recount of the election of all state offices and all state referenda elections is filed with the State Elections Board, 132 East Wilson Street, Madison, 53702.
- The petition for the recount of all county offices and all county referenda elections is filed with the county clerk in the county in which the election took place. In Milwaukee County, the recount petition is filed with the Milwaukee County Board of Elections Commissioners.
- The petition for all municipal offices, including the election of all city, village, and town offices, and for all municipal referenda is filed with the municipal clerk where the election occurred. In the City of Milwaukee, the recount petition is filed with the City Board of Election Commissioners.
- The recount petition for all school board offices and all school referenda elections is filed with the school district clerk.
- The recount petition for all other special purpose offices and referenda elections, is filed with the clerk of the jurisdiction calling the election.

#### **When Must the Petition be Filed?**

The petition must be filed so it is in the physical possession of the filing officer at a specified time. The deadlines for filing are as follows:

- If a municipal or county board of canvassers determines the election result, the time is not earlier than the completion of the canvass for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the board of canvassers which determines the election or referendum results.

- If the state board of canvassers determines the election or referendum, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Elections Board receives the last statement from the county board of canvassers.

### **What Happens When the Petition is Filed Properly?**

Before the petition is actually filed, the filing officer typically knows, based on the results of the election or referendum, that a recount is likely. In addition, the filing officer may begin to suspect, based on questions that he or she may receive, that a recount is a possibility. Under these circumstances the filing officer alerts the members of the board of canvassers to be prepared for a recount. The board of canvassers should arrange their schedules to allow them to be available for the recount when they are notified that a recount petition was filed and that a recount will be conducted. When the petition is filed, the filing officer informs the board of canvassers where and when to convene to begin the recount.

Upon receipt of a valid recount petition, the filing officer shall make a copy of the petition for delivery to all candidates whose names were listed on the ballot for the same office. In a partisan primary, candidates from all parties for the same office must be notified by the filing officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. Upon delivery, the candidate or agent shall be required to sign a receipt. If a candidate or agent does not personally accept delivery, the petition copies shall be given promptly to the sheriff. The sheriff shall promptly serve copies on the candidates without fee.

The filing officer should inform each candidate to whom notice of the recount was given of the place and time of the recount when petition copies are served on the candidates. The filing officer should also inform each candidate of his (or her) right to be present during the recount and to be represented by counsel to observe and challenge the votes cast and the canvassers' decisions at the election. The petitioner and candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings.

### **Who Conducts the Recount?**

The board of canvassers that determines the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount. The board of canvassers should be composed of the same people who initially canvassed the election results. However, there may be substitutions among the members of the board of canvassers caused by illness or absence from the community during the recount.



**SAMPLE  
RECOUNT PETITION**

In Re: The Election for  
(specify office)

Verified Petition  
for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired); each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

\_\_\_\_\_  
Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(or any other person authorized to administer oaths)

My Commission Expires \_\_\_\_\_  
(specify expiration date)

The information on this form is required by s.9.01, Stats. This form is prescribed by the State Elections Board, 132 East Wilson Street, Suite 200, P.O. Box 2973, Madison, WI 53701-2973, 608-266-8005.

## Calculating Recount Fees

Upon receiving a petition the clerk shall calculate any fee due or reasonably estimate any fee due... The clerk shall provide the petitioner promptly with the total due or estimate.

If 1,000 or less votes are cast	
Vote difference	Amount Due
Less than 10 votes	No fee due
At least 10 votes	\$5 per ward
If more than 1,000 votes are cast	
Vote difference	Amount Due
No more than .5%	No fee due
More than .5% but not more than 2%	\$5 per ward
More than 2%	Actual cost

See s.9.01(1), Stats.